

Rye City Planning Commission Minutes

October 23, 2001

PRESENT:

Michael W. Klemens, Chairman
Joseph P. Cox
Philip DeCaro
Lawrence H. Lehman

ABSENT:

Peter Larr, Vice Chairman
Douglas McKean
Brian Spillane

ALSO PRESENT:

Christian K. Miller, AICP, City Planner
George J. Mottarella, City Engineer
Chantal Detlefs, City Naturalist
Nicholas Hodnett, Chairman, Conservation Commission/Advisory Council
Dennis Buckley, Conservation Commission/Advisory Council
Carolyn C. Cunningham, City Council
Arthur H. Stampleman, City Council

Chairman Klemens called the regular meeting to order in the Council Hearing Room of the City Hall and a quorum was present to conduct official business. He noted that since there were only four members present for the meeting that any applicant wishing to defer a decision on an agenda item could do so without prejudice.

I. HEARINGS

1. Discussion of Wetland Violations and Administrative Procedures

Chairman Klemens read the public notice explaining that the purpose of the public meeting was to hear public comments regarding the City Planner's memorandum to the Planning Commission regarding suggested changes in the administrative procedures for the processing of violations of the City's Wetlands and Watercourses Law. The memorandum also discusses possible changes by the City Council in the City's Wetlands and Watercourses Law. The memorandum was written with the input and assistance of City Staff and the Planning Commission Chairman, one of the original authors of the law.

The Chairman provided an overview of the City Planner's memorandum beginning with the first recommendation, which suggested not sending wetland violations directly to court, but rather to the Planning Commission for their review and remediation approval. It was noted that this recommendation would prevent the Court from imposing a remedy for a violation that might not be viewed favorably by the Planning Commission.

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1 The Chairman reviewed the second recommendation, which noted that the threshold for the
2 types of activities requiring wetland permit is very low and that the City might consider
3 expanding the list of exempted activities not requiring a permit. The Chairman noted that
4 many violations are initiated from neighbor complaints or disputes and that the relatively
5 low threshold for permit activities leave little discretion for City Staff to avoid issuing
6 violations for relatively minor activities.

7
8 The Chairman noted that the City Planner's memorandum recommends eliminating
9 administrative cures of wetland violations. This practice is common for building permit
10 violations and has been done City Staff in the past for wetland violations. The
11 memorandum recommends that this process be discontinued and that all remediation
12 plans for violations be reviewed and approved by the Planning Commission.

13
14 Replacing the City Naturalist as the officer responsible for the enforcement of the City's
15 Wetlands Law was also recommended in the City Planner's memorandum. The
16 memorandum notes that the Building Inspector is better trained in the administrative and
17 legal procedures in issuing violations. The Chairman also noted that it put the City
18 Naturalist in an uncomfortable position of operating in both a wetland enforcement capacity
19 and outreach efforts for participation in Rye Nature Center activities.

20
21 The final two City Planner recommendations including increasing the use of a wetlands
22 consultant to assist the City with the review of wetland violations and improving awareness
23 of the City's Wetland's Law. The Chairman added that increased awareness could include
24 educating contractors and property owners and improving stewardship of wetland areas by
25 making resources available.

26
27 The Chairman concluded the overview by noting that the discussion was not a formal
28 hearing, but an opportunity to seek public comment on the proposed changes. He further
29 noted that the discussion would continue in the future, but that timely action on this matter
30 was necessary.

31
32 Councilwoman Cunningham noted that any changes in the Wetlands and Watercourses
33 Law would require City Council approval. As one of the original authors of the Law she
34 noted that changes might be necessary including some of those recommended by the City
35 Planner. She noted personal experience with the wetlands law when she changed a
36 window in her residence. She questioned whether it is appropriate for such a minor
37 modification to require a fee for a wetland determination by the City Naturalist.

38
39 Ms. Cunningham commented that it appeared acceptable to have wetland violations go
40 directly to the Planning Commission rather than to Court. She noted that the procedure
41 follows the model wetland ordinance developed by Laura Tessier and Westchester County.

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1 Ms. Cunningham questioned whether shifting wetland enforcement responsibilities to the
2 Building Inspector would overburden his workload. Chairman Klemens advised Ms.
3 Cunningham that it was his understanding that the Building Inspector has for the most part
4 already assumed that responsibility.

5
6 Ms. Cunningham expressed reservation any change in the law that would permit the use of
7 chemical fertilizers and pesticides within wetland and wetland buffer areas.

8
9 In terms of the greater use of a wetlands consultant, Ms. Cunningham questioned how
10 successful the use of the consultant had been in the past and whether the charge-back
11 provision for consultant services was an onerous expense on homeowners. The City
12 Planner advised the Commission and Ms. Cunningham of the current fees for wetland
13 permit applications. Ms. Cunningham suggested that the average consultant fee to review
14 wetland permit applications be provided.

15
16 Ms. Cunningham suggested that any changes to the City Code should be provided in the
17 form of a recommendation to the City Council for its consideration.

18
19 Nicholas Hodnett, Chairman of the Conservation Commission/Advisory Council (CC/AC)
20 noted that most of his remarks were provided in writing to the Commission. He noted that
21 his remarks have been circulated to CC/AC members, but that they have not been officially
22 endorse by the Commission. He anticipated that those members providing remarks would
23 do so shortly.

24
25 Mr. Hodnett provided some historical background as to the genesis of the wetland
26 determination fee. He noted that this fee was used to offset the costs of the City Naturalist
27 to inspect the property and make a determination as to whether a proposed activity
28 requires a wetland permit. He also explained that the fee help pay for the CC/AC's
29 periodic use of a consultant to provide education and staff training.

30
31 The Commission questioned the equity in the wetland determination fee as applied to
32 every building permit application when many activities are clearly outside wetland areas or
33 their 100-foot buffer. The City Planner explained that every application paying the \$20 fee
34 receives a service including the City Naturalist visiting a property to conduct an inspection
35 and making a wetland permit determination. The Commission discussed the use of a
36 wetland consultant noting that applicants typically provide consultants in support of their
37 applications, but that upon occasion the Planning Commission retains consultant services
38 to review an application.

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2. Stevenson Residence

The Chairman noted that the hearing was a continuation and read the public notice. Cormac Byrne of Laurie Jones Associates (applicant's architect) provided an overview of the project, which involves a building addition, driveway modification, fencing and porte cochere on the front of the residence. He noted that the residence was originally constructed in 1890 and that it had been modified in the 1960s. To offset wetland buffer impacts, Mr. Byrne noted that 1,500 square feet of mitigation area had been provided. Changes to the application included relocating the mitigation area and reducing the extent of perimeter fencing.

Mr. Ted Dunn reiterated the concerns expressed in his letter to the Commission regarding the proposed mitigation area. He noted that he preferred the early plans in which the green area on the northern half of the property remained open. He noted the proposed plant material and perimeter fencing would block views of Long Island Sound. Mr. Dunn suggested that in his opinion preserving the existing view shed was more important than the modest benefits of the proposed vegetated area to address infrequent storm events.

The Commission noted to Mr. Dunn that it could address concerns regarding blocking of views with a condition of approval to require low-height plant material. Mr. Dunn responded that a future owner may change the plant material to block views and that preserving the existing open green area was his preference. The Commission noted that it would make a decision that balances Mr. Dunn's concerns with a mitigation strategy that based on sound ecological merits.

On a motion made by Joseph P. Cox, seconded by Philip DeCaro and carried by the following vote:

AYES: Michael W. Klemens, Joseph P. Cox, Philip DeCaro, Lawrence H. Lehman

NAYS: None

ABSTAIN: None

ABSENT: Peter Larr, Brian Spillane, Douglas McKean

the Planning Commission took the following action:

ACTION: The Planning Commission closed the public hearing.

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II. ITEMS PENDING ACTION

1. Stevenson Residence

The Commission began the discussion by noting that the CC/AC in its comments to the Commission noted concern with the relationship of the mitigation area on the original plan to the proposed wetland area. In response to these concerns and the concerns of the Commission, the mitigation area was increased in size and modified. To eliminate the mitigation area would require the concurrence of the CC/AC or the Commission would need to prepare written findings offering an explanation as to why an approved plan was inconsistent with the CC/AC recommendation.

Mr. Byrne suggested that a hybrid plan might be possible to reconfigure the plan to provide more mitigation area along the northern property line and reduce the amount of mitigation along Pine Island Road. Mr. Byrne noted that the City's Wetland's Law appears to allow the Commission to reduce the amount of mitigation when less than 2,000 square feet of disturbance is involved. The Commission noted that it was its practice to require 2:1 mitigation for wetland buffer disturbances.

Mr. Dunn noted that the 1992 Nor'easter was a major storm event in which the lawn area on the Stevenson property was not impacted. Consequently, Mr. Dunn questioned the need and benefit of the mitigation area to minimize storm impacts. The Commission responded by noting that other mitigation strategies, such as eliminating the use of chemical pesticides and fertilizers or requiring the property to be left in its natural state, would be more meaningful mitigation measures but that these mitigation strategies were too aggressive for the City and its residents.

The Commission noted that the fence might be required to protect children from running into Pine Island Road.

The City Planner suggested that the mitigation area be reconfigured to a triangular shape located in the northwest corner of the property. Nicholas Hodnett noted that wave action was greatest from the east, not the west and that this reconfigured mitigation area would be acceptable.

The Commission requested that the plan be revised to show the reconfigured mitigation area and that the type and number of wetland plants be added to the plan. The Commission emphasized that the selected plant material should be low-lying to minimize visual impacts.

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2. Marvin Davidson Pool

Jason Mooney of Ken Nadler Architects (applicant's architect) noted that the grading on the plan adjacent to the swimming pool had been eliminated as requested by the Planning Commission at its last meeting. The Commission found the revised plan acceptable.

On a motion made by Philip DeCaro, seconded by Joseph P. Cox and carried by the following vote:

AYES: Michael W. Klemens, Joseph P. Cox, Philip DeCaro, Lawrence H. Lehman

NAYS: None

ABSTAIN: None

ABSENT: Peter Larr, Brian Spillane, Douglas McKean

the Planning Commission took the following action:

ACTION: The Planning Commission adopted a resolution approving wetland permit #96.

3. 269 Purchase Street Associates

The Planning Commission reviewed a resolution reflecting its decision at its October 9, 2001 meeting to approve modified site plan #72A located at 269 Purchase Street. The conditions of approval were reviewed with Mr. Jonathan Kraut (applicant's attorney). Mr. Kraut noted that though not provided with a copy of the resolution, the conditions discussed at the meeting appeared acceptable. Mr. Kraut also clarified that the owner of Lot 1 would be responsible for maintaining the landscaped buffer easement on Lot 2.

On a motion made by Lawrence H. Lehman, seconded by Joseph P. Cox and carried by the following vote:

AYES: Michael W. Klemens, Joseph P. Cox, Philip DeCaro, Lawrence H. Lehman

NAYS: None

ABSTAIN: None

ABSENT: Peter Larr, Brian Spillane, Douglas McKean

the Planning Commission took the following action:

ACTION: The Planning Commission adopted a resolution approving modified final site plan application #72A.

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4. 262 Purchase Street

Joe Latwin (applicant's attorney) provided an overview of the revised site plan application. He noted that the plan had been revised to reflect the comments raised at the Commission's last meeting. Mr. Latwin represented that on October 11 he contacted the property owner at 266 Purchase Street but had received no response regarding his request to secure a driveway easement across the abutting property.

Mr. Latwin noted that the revised plan shifts the building to the south and locates a separate driveway on the north side of the property. The application will require a side yard setback variance from the southern property line, but that he contacted the abutting property owners, the Forsbergs, who have indicated that they would not oppose the variance request. The revised plan would locate the building approximately one-foot from the Forsberg driveway.

Mr. Latwin noted that in order to minimize rock removal on the rear of the property that the building had been pushed forward requiring a front yard setback variance. Mr. Latwin also clarified that a tree shown on the southern property line was in error and does not exist.

The Commission noted that it was pleased with the applicant's attempt to respond to the concerns of the Commission and a neighboring property owner, but that after a more complete review the revised plan raises other concerns. The Commission noted that the revised plan would result in the loss of a significant pine tree on the property. The relocation of the driveway would essentially preclude on-street parking in front of the site and further reduce on-street parking opportunities in an area with limited parking available during peak periods. They noted that despite the revision, the application still appears to be too much development for the property as exhibited by the need for three different variances and the less-than-desirable one-foot separation of the proposed building from both the proposed driveway on the north side of the building and the existing common driveway on the south side of the building. The Commission also noted that the proposed use, while a use permitted subject to additional standards and requirements under the Zoning Code, may not be consistent with the character and existing residential pattern of other similar-sized lots in the RA-2 Residential Apartment District. It was further noted that a conversion of the property to a medical office use would reduce the potential for additional lower-cost, multi-family housing in the community. The City Planner concurred with the Planning Commission's assessment of the application.

Mr. Latwin responded by noting that with the recent cooperation of the adjacent Forsberg property that neighborhood opposition to the application was not likely. He suggested that the trees on the property are renewable. Mr. Latwin noted that the area includes a variety of medical office uses including those immediately to the north and on the west side of Purchase Street across from the subject site. In terms of the change in the pattern of the

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1 neighborhood to commercial use, Mr. Latwin noted that a property immediately across the
2 street and zoned for business use was recently proposed to be used for two, two-family
3 residences.

4
5 The Commission responded by noting that the site and proposed development might work
6 better if the intensity of the use were reduced possibly to a sole practitioner rather than two
7 doctors.

8
9 Mr. Latwin reminded the Commission that the City Council has made a legislative
10 determination that medical uses are permitted in the RA-2 District and that the
11 Commission cannot override that determination if it feels such uses are inappropriate. The
12 City Planner clarified that the City Council permitted medical office uses, but that such uses
13 are permitted subject to additional standards and requirements, which are outlined in the
14 City Zoning Code. The City Planner noted that any decision regarding the subject
15 application must be consistent with those standards and requirements as established by
16 the City Council.

17
18 The Commission recited, reviewed and discussed the revised plan's compliance with each
19 of the permit decision criteria of Section 197-10 of the City Zoning Code, noting the
20 following (permit criteria indicated in *italic*):

21
22 (1) *In a residence district the proposed use will serve a community need or*
23 *convenience.*

24
25 The Commission was not certain as to whether the use served a community need, but
26 suggested that the need for additional medical uses in the area was possible.

27
28 (2) *The proposed use will be appropriate in the proposed location and will have no*
29 *material adverse effect on existing or prospective conforming development, and the*
30 *proposed site is adequate in size for the use.*

31
32 The Commission indicated that the application was not consistent with this standard
33 and that a larger property was likely necessary to accommodate the proposed use,
34 parking and access driveway without requiring variances. The Commission noted
35 that greater separation of the building from adjacent driveways is also needed.

36
37 The Commission suggested that the proposed use might impact future development
38 by initiating a trend in the conversion of residential to commercial use and that the
39 loss of residential use would not be desirable from an affordable housing perspective
40 and inconsistent with the intent of the RA-2 Residential Apartment District.

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- 1 (3) *In cases where conversion is proposed of a structure designed and built originally*
2 *for other uses, the structure will be adaptable.*
3

4 The Commission noted that this standard was not applicable since it did not involve
5 the re-use of an existing structure, but rather the construction of a new building.
6

- 7 (4) *The proposed use will be provided with adequate off-street parking to meet its*
8 *needs, properly screened from adjoining residential uses, and entrance and exit*
9 *drives are to be laid out to minimize traffic hazards and nuisance.*
10

11 The Commission noted that on-street parking would be lost as a result of the
12 relocated driveway and that for sight line considerations parking in front of the site
13 should be prohibited. City Council action is required to impose this parking
14 restriction. The application would further reduce on-street parking opportunities in an
15 area with limited parking available during peak periods. It was also suggested that
16 given the number of doctors and patients visiting the site that there may not be
17 enough off-street parking to accommodate the proposed use.
18

19 The Commission noted that there was only modest screening of the proposed
20 parking area from the adjacent residential use. Mr. Latwin noted that a six-foot
21 stockade fence would be provided.
22

- 23 (5) *The potential generation of traffic will be within the reasonable capacity of the*
24 *existing or planned streets and highways providing access to the site.*
25

26 The Commission noted that adjacent roadways have adequate capacity to
27 accommodate the additional traffic from the proposed uses.
28

- 29 (6) *There are available adequate and proper public or private facilities for the*
30 *treatment, removal or discharge of sewage, refuse or other effluent that may be*
31 *caused or created by or as a result of the use.*
32

33 The Commission indicated that the application appeared to be consistent with this
34 standard.
35

36 The Commission noted that the Zoning Code also permits the imposition of conditions on
37 the application to reduce impacts. The Commission suggested that limiting the use of the
38 property to one doctor might be a condition to reduce the intensity of the use on the
39 property. Douglas Cooper (applicant's architect) noted that such a restriction would not
40 materially affect the site design of the property, because the building footprint would not
41 substantially change if it were used for only one doctor.
42

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1 Mr. Latwin also added that the lot immediately adjacent to the site has multiple doctors in
2 the building and serves as a precedent for medical uses in the RA-2 District. The
3 Commission responded by noting that property at 266 Purchase Street is the largest
4 property in the RA-2 District and nearly twice the size of the subject property and can
5 therefore better accommodate the proposed use.

6
7 The Commission discussed the proposed construction process and the removal of the
8 existing building. The applicant agreed not to block traffic during the demolition process.

9
10 Mr. Maro (property owner) noted that the amount of parking provided will accommodate the
11 proposed use and is consistent with the amount of parking provided by other medical uses
12 in the area. He noted that he has attempted to be responsive to the Commission's
13 concerns, which in his opinion appeared to change each meeting and that the application
14 complies with the criteria outlined in the Zoning Code. He also stated that there is limited
15 commercial space in Rye for new medical office buildings.

16
17 Mr. Latwin requested that the Commission not make a decision on his application so that
18 he may review the matter with his client and explore other possible changes in the plan.
19 The Commission agreed to his request.

20 21 **5. McGuire Residence**

22
23 Richard Horsman (applicant's architect) provided an overview of the project, which involves
24 the re-habilitation and extension of an existing seawall and addition of fill. The
25 Commission questioned the need for the increase in the height of the wall. Mr. Horsman
26 and McGuire explained that a uniform grade along the wall was desired to eliminate
27 periodic flooding in the corner of the property and minimize erosion. They noted that the
28 height of the wall would not exceed the current highest point.

29
30 The Commission noted that an engineer should review the wall design to confirm its
31 structural integrity, since the additional soil will add pressure on the landward side of the
32 wall. It was also noted that the plans should be revised to show the removal of the existing
33 wall.

34
35 The Commission noted concern with the application since it would involve the placement of
36 fill within a designated flood zone, requiring a variance from the Zoning Board of Appeals.
37 Mr. McGuire noted that the need for the fill is to eliminate on site flooding conditions. The
38 Commission responded that it has historically discouraged the "armoring" of seawalls
39 within the City in favor of the planting of natural vegetation to address erosion and storm
40 damage. The Commission recommended that the City Planner review previous
41 applications for seawall modifications in the City.

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1 The Commission concluded its discussion by agreeing that the applicant should procedure
2 with securing the required variances from the Zoning Board of Appeals. They also agreed
3 that they would conduct a site walk of the property.

6. June & Ho, Inc.

7 Chairman Klemens disclosed that he was a tenant of the building adjacent to the subject
8 application. No member of the Commission indicated that such a condition constituted a
9 conflict of interest. The Chairman did not recuse himself and participated in the
10 discussion.

11
12 The Commission noted that the plans should be revised to increase the height of the
13 proposed exhaust vent so that it was at least 40 inches above the height of the adjacent
14 building. The plan should also be revised to include sinks within the proposed bathrooms.

15
16 The Commission noted that the existing practice of disposing of ice down storm drains
17 should be discontinued and not permitted in the proposed facility. Mr. Park agreed that
18 this practice would be discontinued. It was also agreed that solid waste would be
19 disposed of on a daily basis for the proposed development on a daily basis.

20
21 The Commission discussed with the City Engineer the demolition and construction
22 process for the proposed building. Mr. Lee (applicant's architect) estimated that the
23 demolition should take approximately two weeks.

24
25 The Commission agreed that there was no need for an additional public hearing since
26 there were no significant modifications in the proposed final application as compared to
27 the approved preliminary site plan application. The Commission requested that the City
28 Planner prepare a resolution of approval for its consideration at its November 13 meeting.

7. 22 Elm Place Associates

30
31
32 John Fareri (applicant) provided an overview of the requested modified final site plan
33 approval. Mr. Fareri noted that the plans had been revised in response to comments
34 raised by the Board of Architectural Review and that these changes, including modification
35 in the building façade, location of the proposed kitchen and dining area and modification in
36 the parking area, necessitated modified site plan approval by the Planning Commission.

37
38 The Commission inquired about the exhaust fans. Mr. Fareri noted that the fans had been
39 relocated to minimize impacts on adjacent property owners.

40
41 The Commission noted that the proposed modifications appeared minor and that the
42 modified site plan should be approved.

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On a motion made by Michael W. Klemens, seconded by Philip DeCaro and carried by the following vote:

AYES: Michael W. Klemens, Joseph P. Cox, Philip DeCaro, Lawrence H. Lehman

NAYS: None

ABSTAIN: None

ABSENT: Peter Larr, Brian Spillane, Douglas McKean

the Planning Commission took the following action:

ACTION: The Planning Commission adopted a resolution approving modified final site plan application #220B.

8. Rye Community Synagogue

The Commission reviewed with Mr. Kraut (applicant's attorney) his letter to the Commission dated October 4, 2001. The letter requested specific changes in the Commission's recent resolution of approval for the Synagogue. The Commission concurred with Mr. Kraut's request and agreed to amend the resolution of approval consistent with the request outlined in Mr. Kraut's letter.

On a motion made by Michael W. Klemens, seconded by Philip DeCaro and carried by the following vote:

AYES: Michael W. Klemens, Joseph P. Cox, Philip DeCaro, Lawrence H. Lehman

NAYS: None

ABSTAIN: None

ABSENT: Peter Larr, Brian Spillane, Douglas McKean

the Planning Commission took the following action:

ACTION: The Planning Commission agreed to amend resolution number 17-2001 to reflect the comments raised in my Kraut's October 4, 2001.

9. Minutes

The Planning Commission deferred its discussion and approval of the October 9, 2001 minutes to its next meeting.

There being no further business the Commission unanimously adopted a motion to adjourn the meeting at approximately 11:15 p.m.

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Christian K. Miller, AICP
City Planner